



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Thursday, October 12, 2023

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY
LLP FOR DANIEL L. EGAN, OTHER PROFESSIONAL(S)
9-8-2023 [\[604\]](#)

PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Daniel Egan ("Egan") on behalf of Wilke Fleury LLP ("Applicant"),
counsel for Chapter 11 Plan Administrator Terence J. Long
("Administrator") in the above-styled Chapter 11 case, comes before
the court on Applicant's First Interim Application for Fees And
Expenses Pursuant to 11 U.S.C. § 331. Doc. #604. The Application
requests attorney fees in the amount of \$61,248.50, plus expenses in
the amount of \$7.05. *Id.* Applicant brings this request pursuant to
LBR 2016, 11 U.S.C. § 331, and Fed. R. Bankr. P, 2002, and 2017.

This is the First Interim Application brought by this Applicant, and
it covers services rendered from September 20, 2022, through July
31, 2023. Doc. #604. Included with the Application is a Declaration
signed by the Administrator evincing his consent to this fee
application. *Id.*

No party in interest timely filed written opposition. For the
reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required
by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which
the failure of the creditors, the chapter 13 trustee, the U.S.
Trustee, or any other party in interest to file written opposition
at least 14 days prior to the hearing as required by LBR 9014-
1(f)(1)(B) may be deemed a waiver of any opposition to the granting
of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).
Further, because the court will not materially alter the relief
requested by the moving party, an actual hearing may be unnecessary
in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468
F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the
defaults of the above-mentioned parties in interest are entered and
the matter may be resolved without oral argument. Upon default,
factual allegations will be taken as true (except those relating to
amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d
915, 917 (9th Cir. 1987). Constitutional due process requires that a
plaintiff make a *prima facie* showing that they are entitled to the
relief sought.

Exhibits accompanying the Application include (A) a Declaration of the Administrator's consent, (B) a Declaration from Egan outlining the history of his employment in this case, (C) exhibits which include a copy of the order approving Applicant's employment, Applicant's invoice to Administrator, and Egan's personal biography. Doc. #608. In addition, the motion included a narrative summary of the services provided in this case and a summary of the work performed and the expenses incurred. Doc. #604, 608. Egan's summary of fees includes legal work performed by himself, co-counsel Steven Williamson and Robert Mirkin, and paralegal Sharon Brazell:

Attorneys	Hourly Rate	Hours	Total Fees
Daniel Egan	2022 rate: \$475.00	54.6	\$25,935.00
Daniel Egan	2023 rate: \$495.00	67.8	\$33,561.00
Steven Williamson	\$425.00	3.60	\$1,530.00
Robert Mirkin	\$475.00	.30	\$142.50
Sharon Brazell (Paralegal	\$200.00	.40	\$80.00

Doc. #604. Applicant also incurred expenses of \$7.05 for "Document Ordering (First American Data Tree). *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$61,248.50 in fees and \$7.05 in expenses, for a total application of \$62,255.55. The Administrator is authorized to pay the allowed fees and expenses as an administrative expense to the Debtor has the funds on hand to do so.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-4](#)

MOTION FOR COMPENSATION FOR TERENCE J. LONG, OTHER
PROFESSIONAL(S)
9-8-2023 [\[610\]](#)

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Chapter 11 Plan Administrator Terence J. Long ("Applicant") in the above-styled Chapter 11 case, comes before the court on Applicant's First Interim Application for Fees And Expenses Pursuant to 11 U.S.C. § 331. Doc. #610. The Application requests attorney fees in the amount of \$38,391.50. *Id.* The Application does not request any costs or expenses. Applicant brings this request pursuant to LBR 2016, 11 U.S.C. § 331, and Fed. R. Bankr. P, 2002, and 2017.

This is the First Interim Application brought by this Applicant, and it covers services rendered from January 20, 2022, through July 31, 2023. Doc. #6010. Included with the Application is a Declaration signed by the Administrator evincing his consent to this fee application. *Id.*

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

Exhibits accompanying the Application include (A) a Declaration from Applicant outlining the history of his employment in this case (Doc.

#613) and (B) exhibits which include Applicant's invoice to Administrator and a summary of fees by category. Doc. #612. In addition, the motion includes a narrative summary of the services provided in this case and a summary of the work performed and the expenses incurred. Doc. #610.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by). . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$38,391.50 in fees for a total application of \$38,391.50. The Administrator is authorized to pay the allowed fees as an administrative expense from the estate funds currently held by or available to the Administrator in the future.

3. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION**
[WJH-12](#)

CONTINUED MOTION TO COMPEL
7-11-2023 [\[88\]](#)

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-18](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
9-25-2023 [\[194\]](#)

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party
will submit a proposed order after hearing.

Debtor Twilight Haven, a California Non-Profit Corporation ("Debtor") asks the court for authorization to reject two executory contracts between Debtor and Marlin Capital Solutions ("Marlin") regarding the lease of copier equipment ("the Agreements"). Doc. #194. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. The motion was supported by the declaration of Debtor's Chief Executive Officer, Kristine Williams ("Williams"), as well as a memorandum of points and authorities. Docs. ##196, 198. Copies of the Agreements are attached as exhibits. Doc. #197.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on June 22, 2023. Doc. #1. Prior to filing bankruptcy, Debtor executed both Agreements to lease the copy machines. Doc. #197. According to Williams' Declaration, the Debtor has ceased all use of the copy machines that are the subject of the two lease agreements. Doc. #196. Consequently, Debtor avers that the leases provide no benefit to the Debtor and should be rejected. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the

functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor.

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. V. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because the Debtor no longer makes use of the copy machines, and so the Agreements are no longer beneficial to Debtor or the estate.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. The court will inquire about the proposed claims bar date for claims based on this motion at the hearing, but the court is inclined to set **December 11, 2023**, as the bar date. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

5. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-20](#)

MOTION FOR EXAMINATION AND/OR MOTION FOR AN ACCOUNTING
9-26-2023 [[200](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: Order preparation determined at the hearing.

Debtor-in-possession Twilight Haven ("TH" or "Debtor") requests an order under Rule 2004 compelling Ermel Don Doyle, Jr. to appear at an examination and produce documents. In addition, TH asks for an order compelling Mr. Doyle to prepare and file an accounting by a date certain under §543 of the Bankruptcy Code.

This motion is scheduled to be heard on less than 28 days' notice under LBR 9014-1 (f)(2) and as such no written opposition is necessary. Should opposition be presented, the court may change its' ruling or continue the matter for further evidence and briefs.

Before filing, TH had a Temporary Manager appointed by the California Department of Public Health to handle a financial bind TH was in to pay for employees and maintain the Skilled Nursing Facility operated on Debtor's property. Wolf Point, LLC was the Temporary Manager. It is unclear from the motion how Mr. Doyle is related to Wolf Point, LLC but Mr. Doyle signed the agreement with the State of California as CEO of Wolf Point, LLC. Doc. # 203

TH demanded turnover and an accounting under §543. Though Wolf Point, LLC did supervise the discharge of the skilled nursing patients from TH's facility, it also collected receivables, obtained two fund advances from the State of California, and was on site from April 14, 2023, to May 31, 2023.

Wolf Point provided TH with a reconciliation detail showing that in about two weeks, Wolf Point took possession of about \$458,000. Doc. #202 After TH's counsel issued a demand for turnover, Wolf Point served a Balance Sheet Detail on TH's counsel. *Id.* It showed an additional \$200,000 loaned from the State of California for payroll and \$284,000 for services rendered. *Id.*

The court ordered Wolf Point to file an accounting on or before September 13, 2023. Doc. # 173. No accounting was filed by that date. No accounting has been filed since then through the preparation of this ruling.

Rule 2004 examinations in chapter 11 cases may relate to acts, conduct, or property or to the liabilities and financial condition

of the debtor, or to any manner affecting administration of the estate. Also, the examination may relate to the source of any money or property acquired or to be acquired by the debtor and any other matter related to the case or to formulation of the plan. Rule 2004.

TH here questions Wolf Point's financial transactions during its tenure as Temporary Manager and questions the reasonableness of the fees charged for services rendered. These matters relate to the property of TH, the administration of the bankruptcy estate, possible sources of funds for a plan, TH's financial condition, and relates to formulation of a plan. The examination also relates to TH's liability, if any, to the State of California

Independently, though certain accounting documents have been provided to TH no accounting has been filed with the court as required by § 543 (b) (2). This is true notwithstanding this court's previous order.

The motion will be GRANTED.

11:00 AM

1. [23-11195](#)-B-7 **IN RE: RAUL CEBALLOS AND SARA RAMIREZ**

REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
9-7-2023 [\[17\]](#)

JERRY LOWE/ATTY. FOR DBT.

NO RULING

1:30 PM

1. [23-10719](#)-B-7 **IN RE: SONIA MALDONADO**
[FW-2](#)

MOTION TO SELL
9-12-2023 [\[40\]](#)

JAMES SALVEN/MV
GRISelda TORRES/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
bids, only.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to sell the estate's interest in a 2016 Springdale trailer, model no. M-240BHWE ("the Trailer") to Sonia Armenta Maldonado ("Debtor") for \$16,500 (\$9,000.00 cash on hand plus credit for Debtor's \$7,500.00 exemption in the Trailer). Doc. #40. The instant motion is brought pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. *Id.* The Trustee presents this proposed sale as a private sale without the involvement of either an auctioneer or a sales agent. *Id.* According to Debtor's Schedule A/B, the Trailer is valued at \$16,750.00, but Trustee argues that, in his business judgment, the proposed sale terms "are beneficial to the estate and provide for a modest sum to the benefit of creditors." Doc. ## 1 (Sch A/B), 40. Trustee has not requested waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h). Doc. #40.

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Debtor filed for Chapter 7 bankruptcy on or about April 8, 2023, listing the Trailer as an asset of the estate. Doc. #1. The Trailer was valued by the Debtor in her schedules at \$16,750.00. *Id.* Initially, no exemption was claimed for the Trailer in the Debtor's Schedule C. *Id.* Rather, the Debtor claimed a \$7,500.00 exemption in a truck, under Cal. Code of Civ. Proc. 704.010, which provides at subsection (a)(1) that amount is exempt from the execution sale of a motor vehicle. On May 5, 2023, the Debtor amended Schedule C to remove the exemption from the truck and apply it to the Trailer. Doc. # 13. On June 13, 2023, the Debtor again amended Schedule C but did not alter the exemption on the Trailer. Doc. #16. Since then, Trustee has agreed to sell the Trailer to the Debtor, subject to her \$7,500.00 exemption claim, for \$9,000 cash in hand, subject to bankruptcy court approval. Doc. #40. While this is \$250.00 below the value of the Trailer listed in Schedule A/B, Trustee avers that the sale at that price (subject to higher and better bids) is in the best interests of the creditors of the estate. Doc. #42.

DISCUSSION

Sale of Property

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny, and the Debtor herself is certainly an insider. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Trailer is listed in *Schedule A/B* with a value of \$16,760.00. Doc. #1. Debtor exempted the Trailer up to the statutory limit of \$7,500.00 in *Schedule C*. *Id.*

Trustee agreed to sell the Trailer to Debtor for \$9,000.00 cash in hand which, along with Debtor's \$7,500.00 exemption, represents a total bid of \$16,500.00, a sum \$250.00 below the value of the Trailer as listed on *Schedule A/B*. Doc #40. Trustee asks the court

to approve this sale "as-is" with no warranty or representations expressed or implied. *Id.*

Based on Trustee's averments, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$16,500.00
Debtor's Exemption	- \$7,500.00
Estimated net proceeds to estate	= \$9,000.00

Id. The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference. \

Overbid Procedures

Trustee submits the following overbid procedures, which require that any prospective higher bidder must:

1. Deposit with the Trustee certified monies in the amount \$9,000 no later than seven days prior to the hearing on this motion as set forth in the Notice of Hearing filed herewith. An unsuccessful bidder's deposit will be returned at the conclusion of the hearing. A successful over bidder's deposit will be applied toward that overbidder's purchase price;
2. Provide written proof of financial ability to cover the necessary overbid amount;
3. Provide written proof that the successful overbidder can close the sale within 7 days of the delivery of a certified copy of the Court's order approving the sale and can execute a purchase agreement for the Trailer;
4. Be prepared to match the terms and conditions of the stalking horse bidder;
5. Be aware that in the event the successful overbidder fails to close the sale and execute a purchase agreement within 7 days of the delivery of a certified copy of the Court's order approving the sale for any reason, the deposit noted in subsection (i) [of the motion] above becomes non-refundable;
6. Be present at the sale hearing and be prepared to match non-monetary terms included in the contract or by other bidders;
7. Make all overbids in the amount of \$250; and
8. Acknowledge that sale of the Trailer shall be "as-is" with no warranty or representations expressed or implied by the Debtors or their representatives.

Waiver of 14-day Stay

The Trustee has not requested a waiver of the 14-day stay.

Conclusion

No party in interest timely filed written opposition. Assuming there are no better bids his motion will be GRANTED. Trustee will be authorized to sell the Trailer to the Debtor for \$9,000.00 cash in hand, subject to higher and better bids, if any, at the hearing which comply with the overbid requirements outlined above.

2. 23-11124-B-7 **IN RE: JUAN FLORES RUIZ AND RUTH FLORES** UST-1

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO DISMISS CASE
PURSUANT TO 11 U.S.C. SECTION 707(B)
9-1-2023 [25]

TRACY DAVIS/MV
VINCENT QUIGG/ATTY. FOR DBT.
DEANNA HAZELTON/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Tracy Hope Davis, United States Trustee for Region 17 ("UST"), moves to extend the deadlines for filing (i) a motion to dismiss under § 707(b)(1) and/or (b)(3), or (ii) a complaint objecting to the debtors' discharge under § 727, up to and including December 5, 2023. Doc. #25.

No party in interest timely filed written opposition. The motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 7 trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Federal Rule of Bankruptcy Procedure ("Rule") 1017(e)(1) governs dismissal of a case for abuse under § 707(b) or (c) and may only be filed within 60 days after the first date set for the § 341(a) meeting of creditors unless the court extends the time for cause.

Similarly, Rule 4004(a) requires a complaint objecting to the debtor's discharge under § 727 to be filed no later than 60 days after the first date set for the § 341(a) meeting of creditors unless an extension of time is requested. Rule 4004(b)(1) allows the court to extend the time to object to discharge, for cause, on motion of any party in interest, and after a noticed hearing. The motion shall be filed before the time has expired unless the conditions specified in Rule 4004(b)(2) are met.

The court is permitted to enlarge the time for acting under Rules 1017(e) and 4004(a) only to the extent and under the conditions stated in those rules. Rule 9006(b)(3).

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge. These factors include:

- (1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
- (2) The complexity of the case;
- (3) Whether the moving party has exercised diligence; and
- (4) Whether the debtor has been uncooperative or acted in bad faith.

In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011), citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Here, Juan Flores Ruiz and Ruth Flores ("Debtors") filed chapter 7 bankruptcy on May 26, 2023. Doc. #1. The first date set for the meeting of creditors was July 7, 2023, so the 60-day deadline to file a complaint objecting to discharge under § 727, or a motion to dismiss under § 707, was September 5, 2023. Doc. #3. UST timely filed this motion on September 5, 2023. Doc. #25.

According to the moving papers, the first § 341 meeting was held on July 7, 2023. Doc. #27. At that time, the Trustee, Jeffrey M. Vetter ("Vetter"), advised Debtors and their counsel that he had not received any of the required 521 documents, and he continued the § 341 meeting to July 21, 2023. *Id.* At the July 21 meeting, Vetter questioned Debtors about certain irregularities regarding their income. *Id.* Thereafter, the UST's office repeatedly reached out to Debtors for additional documentation necessary for the UST to determine whether Debtors have properly reflected their income and whether they have filed their schedules in good faith. *Id.* It appears that the Debtors have thus far not complied with the UST's requests.

An extension of time will provide UST with sufficient time to complete its evaluation of whether an adversary proceeding for non-dischargeability is necessary. Cause exists based on the stipulation and the status of this case.

Accordingly, this motion will be GRANTED. The deadlines for UST to file a motion to dismiss for abuse under § 701(b)(1) or (b)(3), or a complaint objecting to Debtor's discharge under § 727, is extended up to and including December 5, 2023.

3. [23-11830](#)-B-7 **IN RE: JASON/MEGAN WILLIAMS**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2023 [\[14\]](#)

MERCEDES-BENZ FINANCIAL
SERVICES USA LLC/MV
JERRY LOWE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2020 Mercedes-Benz G550 ("Vehicle"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Jason and Megan Williams ("Debtors") did not file opposition. Debtors' Statement of Intention indicated that the Vehicle would be surrendered. No other party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary

relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors became delinquent under financing agreement pre-petition in the amount of \$6,186.96 and as a result, the account was charged-off on April 15, 2023. Doc. #16; Exs. A, Doc. #17. Under the agreement's acceleration clause, Debtor is in default for the entire balance of \$149,148.61. Ex. A, *Id.*; Doc. #16.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. Doc. #19. The Vehicle is valued at \$136,000.00 and Debtors owe \$149,148.61. *Id.*

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Debtors' Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtors have failed to make at least seven post-petition payments to Movant and the Vehicle is a depreciating asset.

4. [23-10867](#)-B-7 **IN RE: NARPINDER KAUR**

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
9-12-2023 [\[30\]](#)

STEPHANIE SCHREINER/MV
T. O'TOOLE/ATTY. FOR DBT.
WARREN PABOOJIAN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Roland Schreiner and Stephanie Schreiner ("Movants") filed the instant *Motion to Approve Stipulation For Relief from the Automatic Stay* without any DCN at all for the motion or the accompanying documents.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

5. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH**
[DMG-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-5-2023 [\[38\]](#)

JEFFREY VETTER/MV
VINCENT GORSKI/ATTY. FOR DBT.
JEFFREY VETTER/ATTY. FOR MV.
RESPONSIVE PLEADING

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter to correct the continued hearing date.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to November 16, 2023, at 1:30 pm.

ORDER: The court will issue the order.

6. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2023 [\[85\]](#)

JUDITH HORN/MV
GABRIEL WADDELL/ATTY. FOR DBT.
LEAH ZABEL/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Previously, on May 20, 2023, Lisa Anderson ("Debtor") filed a *Motion to Avoid Lien* under DCN FW-2. Doc. #18. On August 25, 2023, Creditors Lisa Hamilton, Rick Hamilton, and Donald Horn ("Movants") filed the instant *Motion for Relief from Automatic Stay*, also under DCE FW-2. Doc. #85. The motion does not comply with the local rules because Each separate matter filed with the court must have a different DCN.

LBR 9004-2(c)(1) requires that motions, notices, documentary evidence, exhibits, memoranda of authorities, and other such documents listed under (c)(1) shall be filed as separate documents. Here, the instant motion is combined into a single filed document along with the notice, a memorandum of authorities, and exhibits in contravention of (c)(1).

On September 28, 2023, Debtor filed a response noting that Debtor was granted a discharge on September 19, 2023, and so the automatic stay is no longer in effect anyway pursuant to 11 U.S.C. § 362(c)2(C), and so the instant motion is moot. Doc. #88.

Finally, while it is unclear, Movants appear to be requesting a declaratory judgment, a matter which should be brought via an adversary proceeding rather than a motion. Rule 7001(9)

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

7. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO
DISTRIBUTION
8-25-2023 [\[73\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
LEAH ZABEL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to October 24, 2023, at 1:30 pm.

ORDER: The court will issue the order.

Creditors Rick and Kris Hamilton ("Hamilton"), Chris and Stephen Thorns ("Thorns"), and Donald and Judith Linda Horn ("Horns") (collectively "Creditors") object to the Trustee's final report because, Creditors claim, Debtor is not entitled to exempt property debtor claims as a homestead.

Notably, Creditors here used Docket Control Number FW-2 which is the docket control number for one of Debtor's motions to set aside a judgment lien. It cannot be used for this unrelated objection. That is grounds to overrule the objection. But the court will continue the hearing for the reasons set forth below.

This dispute arose when Debtor filed motions to set aside judgment liens under §522 (f). Creditors Thorns and Horns opposed the motion. The Hamilton's evidently do not have a judgment lien but have a claim against Debtor's estate.

The Horns and Thorns assert Debtor should not be allowed to set aside the liens due to the value of Debtor's Homestead, Debtor's alleged fraudulent transfer of the Homestead to a third party - though Debtor did reacquire the Homestead Property about a month after the transfer and pre-petition. Creditors also argue that under §522 (p), Debtor's Homestead exemption should be limited to a cap of \$189,050.

Debtor has replied to these arguments.

The court held a continued hearing on the lien avoidance motions on August 29, 2023. At that hearing, the court continued the hearing again to October 24, 2023, at 1:30 pm. The parties had requested a continuance of the hearing and there were certain issues the court wanted to clarify.

The court notes that neither creditors nor any other party timely objected to the exemptions claimed by Debtor in this case. Nonetheless, under Rule 4003 (d) a creditor may object to a request to set aside a judgment lien under §522 (f) by challenging the validity of the exemption asserted to be impaired by the lien.

So, in the interest of efficiency, the court will continue this objection to the continued hearing date for the motions to set aside judgment liens, October 24, 2023, at 1:30 pm.